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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/529,653	06/26/2000	Yong Zou	8737-000007	8304

7590 02/13/2003

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PO Box 828
Bloomfield Hills, MI 48303

EXAMINER

WALLS, DIONNE A

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 02/13/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-6

Office Action Summary

Application No.

09/529,653

Applicant(s)

ZOU ET AL.

Examiner

Dionne A. Walls

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4,6-9,11-14,17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4,6-9,14,17 and 18 is/are rejected.
- 7) ☒ Claim(s) 11-13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 4, 6-8, 14 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 8266261 - Derwent Abstract.

The Derwent Abstract of JP 8266261 discloses a cigarette having a main body and a filter attached integrally to an end of the main body, said filter comprising dried and crushed ginkgo leaves. By providing a cigarette filter formed of ginkgo leaves, a cigarette comprising a burnable material is obviously provided because the "filter" is a part of the cigarette of the Abstract of JP 8266261, and ginkgo leaves are obviously "burnable", since it is a plant material and since almost any material is "burnable" if subjected to high enough temperatures. Therefore, ginkgo leaves as used in the filter of the cigarette of the Abstract of JP 8266261 qualifies as "burnable material". Further, since "ginkgo leaves" qualifies as such a burnable material, the step of smoking a cigarette comprising leaves of ginkgo biloba, as recited in claims 14, 17 and 18, has also been satisfied.

Regarding claims 6-8 and 17 and 18, since the JP reference indicates that any of the listed herbs can be used as filtering agents in its disclosed filter, it follows that one

having ordinary skill in the art could have elected for said filter to comprise from 50-100% ginkgo leaves.

Applicant has added language reciting "wherein the burnable material burns during smoking"; however, this function is deemed to be inherent. As stated in MPEP 2112.01, in product claims, when the structure cited in the reference is substantially identical to that of the claims, a prima facie case of either anticipation or obviousness exists. In this case, the JP reference meets the structural limitations of the claim in that it suggests a cigarette material comprising a burnable material, said material being ginkgo biloba leaves.

3. Claims 4, 9, and 14 rejected under 35 U.S.C. 103(a) as being unpatentable over CN 1140036 - Abstract.

The CN 1140036 - Abstract discloses a toxicity-reduced cigarette that contains liquid having components of ginkgo leaf sprayed onto the smokable material of the cigarette (see English abstract). While CN 1140036 - Abstract may not state that the ginkgo leaves are burnable material or burn during smoking, it follows that the ginkgo leaves burn while smoking since said leaves are sprayed onto the material that is smoked/burned while the cigarette is in use.

Regarding claim 9, while CN 1140036 - Abstract may not state that the smokable material of its invention may be suitable for use in a cigar, it would have been obvious to one having ordinary skill in the art at the time of the invention to use the ginkgo-leaves-sprayed material for such purpose in order to reduce the damage of

nicotine that also would arise from smoking a cigar which, as is well-known, also comprises tobacco which would contain nicotine when smoked by a user.

Allowable Subject Matter

4. Claims 11-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments filed December 2nd, 2002 have been fully considered but they are not persuasive.

- Regarding the JP 8266261 reference, Applicant argues that it discloses the use of "ginkgo nut" or "ginkgo nut powders", as opposed to "ginkgo leaf". However, as evidenced by the English Abstract, translated by Derwent (which is provided for Applicant's review), there seems to be no such indication of "ginkgo nut", since it states "leaves of persimmon, loofah, ginkgo,...". Therefore, one having ordinary skill in the art would have interpreted such language as disclosing a filter having any leaves of ginkgo".

- Regarding CN 1140036, Applicant argues that the ginkgo leaves are sprayed onto the tobacco leaves, while in the present Application, ginkgo leaves only are burned – leading to a non-tobacco cigarette. However, the Examiner contends that the use of the CN 140036 reference is still proper since the word "comprising" in the preamble

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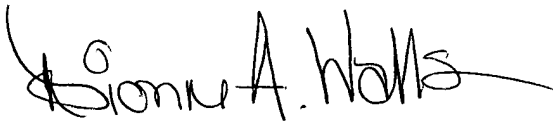
allows for a reference to be applied which includes components in addition to ginkgo leaves.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne A. Walls whose telephone number is (703) 305-0933. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (703) 308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

A handwritten signature in black ink that reads "Dionne A. Walls". The signature is written in a cursive style with a large, stylized "D" and "W".

Dionne A. Walls
February 9, 2003